

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF OKLAHOMA**

KEVIN TYLER BLUM,)	
)	
Plaintiff,)	
)	
v.)	Case No. CIV-15-157-RAW
)	
CITY OF TAHLEQUAH, et al.,)	
)	
)	
Defendants.)	

ORDER

Before the court is the motion of the defendants to dismiss. Plaintiff alleges four claims for relief (along with a request for punitive damages) arising out of an alleged incident of excessive force by police officers on April 27, 2013. The present motion is directed only at plaintiff's fourth claim for relief. In it, plaintiff alleges a claim for excessive force directly pursuant to Article 2, Section 30 of the Oklahoma Constitution. The Supreme Court of Oklahoma recognized such a claim in *Bosh v. Cherokee Cty. Bldg. Auth.*, 305 P.3d 994 (Okla.2013).

On December 16, 2014, however, the Supreme Court of Oklahoma ruled that a "*Bosh* claim" is unavailable when the plaintiff may seek relief under the Oklahoma Governmental Tort Claims Act ("OGTCA"). See *Perry v. City of Norman*, 341 P.3d 689 (Okla.2014). Plaintiff appears to effectively concede that he has not complied with the notice provisions of the OGTCA, because under the *Bosh* decision he brings a constitutional claim, as opposed to a tort claim. The *Perry* decision is to the contrary. As stated, the *Perry* decision was

issued in December, 2014. The present lawsuit was filed on April 27, 2015. The post-*Perry* decisions of which this court is aware have granted dismissal of “*Bosh* claims.” See *Ruiz v. City of Bethany*, 2015 WL 1144902, *2 (W.D.Okla.2015); *Lane v. Jackson*, Case No. 13-CV-636-GKF-FHM (#62)(N.D.Okla. July 9, 2015).

It is the order of the court that the defendants’ motion to dismiss (#14) is hereby granted. Plaintiff’s fourth claim for relief is dismissed.

Dated this 27th day of July, 2015.

A handwritten signature in cursive script, reading "Ronald A. White", written in black ink over a horizontal line.

Ronald A. White
United States District Judge
Eastern District of Oklahoma